Court of King's Bench of Alberta

Citation: Ponto v Wawanesa Mutual Insurance Company, 2024 ABKB 669

Date: 20241115
Docket: 1512 00171
Registry: Wetaskiwin

Between:

Laurie Ponto

Plaintiff/Applicant

- and -

The Wawanesa Mutual Insurance Company

Defendant/Respondent

Reasons for Decision
of the
Honourable Justice L.K. Harris

---

[1] The Plaintiff, Laurie Ponto ("Ms. Ponto"), brings an application for leave to amend her Statement of Claim originally filed in 2015. The Application has been brought in the context of a long-standing dispute between the parties, and a request for extensive amendments. The Application is opposed by the Defendant, Wawanesa Mutual Insurance Company ("Wawanesa").

I. Procedural Background

[2] In July 2013, the Plaintiff's home in Wetaskiwin suffered water damage. At the time, the home was insured pursuant to a policy of insurance issued by Wawanesa (the "Policy"). Ms. Ponto reported the damage to Wawanesa on September 5, 2013, and claimed indemnification from Wawanesa under the Policy.

[3] Wawanesa accepted Ms. Ponto's claim, subject to certain exclusions and limitations contained in the Policy and arranged for a restoration company to prepare an estimate and conduct repairs to Ms. Ponto's home. Almost immediately, Ms. Ponto and Wawanesa had disagreements over the extent of the damage and the scope of the repairs needed. These disagreements included the fact that Ms. Ponto came to believe that not only was her home contaminated with asbestos, but also that the water in her home had caused mold.

[4] Ms. Ponto and Wawanesa were unable to reach an agreement on the scope of repairs required, and Ms. Ponto retained counsel. On June 25, 2015, her counsel issued a Statement of Claim claiming damages against Wawanesa for a breach of the Policy in the amount of $50,000, plus unquantified general damages for inconvenience and loss of enjoyment of property, and $25,000 for aggravated or punitive damages.

[5] Wawanesa filed its Statement of Defence on June 30, 2016, denying that it owed Ms. Ponto any further indemnification under the Policy, or at all. Pleadings have been closed for some time.

[6] Ms. Ponto filed an application in June 2019 seeking an Order approving the removal of Ms. Ponto's husband, Derek Ponto, as Plaintiff (he had since passed away), directing the removal of Defence counsel as counsel of record for Wawanesa, and granting leave to amend the Statement of Claim.

[7] Over a year later, Ms. Ponto was questioned on her affidavits filed in support of her application. Despite that, the application filed in June 2019 was never heard and Ms. Ponto's counsel withdrew as lawyer of record in June 2022.

[8] On June 16, 2023, Ms. Ponto filed a second application. She again sought several forms of relief, including:

(a) leave to make numerous amendments to her Statement of Claim, including the removal of her husband and the addition of Alberta Health Services as Plaintiffs;

(b) an order directing that counsel for the Defendant be removed from the record.

[9] The second application was heard in Chambers on July 18, 2024, and resulted in an Order permitting the removal of Mr. Ponto as Plaintiff. The remaining issues were adjourned to May 3, 2024, in Special Chambers.

[10] At the May 3, 2024 appearance, Ms. Ponto abandoned her application to remove Defence counsel from the record. The remainder of Ms. Ponto's application was adjourned a second time to September 13, 2024, after this Court expressed concerns about the sufficiency of Ms. Ponto's evidence. Ms. Ponto was granted leave to file a supplemental affidavit and supplemental written submissions.

[11] At the September 13, 2024 hearing, Ms. Ponto abandoned her request to have Alberta Health Services added as a Plaintiff. Any proposed amendments addressing a claim by Alberta

Health were thus also abandoned. The only issue left to decide is Ms. Ponto's application for an Order granting leave to make the remainder of the proposed amendments to the body of the Statement of Claim.

[12] The amendments sought by Ms. Ponto are extensive. She seeks to expand what is a relatively straightforward claim for breach of an insurance policy into something more complex by adding a claim based in negligence, alleging mold and asbestos contamination, and significantly expanding the nature and amount damages claimed.

[13] The amendments may be summarized as follows (the reference to paragraph numbers are the paragraphs within the proposed Amended Statement of Claim):

(a) Grammatical amendments throughout the proposed Amended Statement of Claim meant to reflect the removal of Derek Ponto as Plaintiff;

(b) The addition of particulars of damages allegedly sustained and increasing the amount of damages from $50,000 to $155,318.50 (para 12(a) through (k));

(c) The addition of allegations that Wawanesa failed to properly adjust the Plaintiff's claim and failure to address her mould and asbestos concerns in a timely way (paras 17, 18);

(d) That Wawanesa's failure to address her concerns caused her medical issues, resulting in further expense (para 19);

(e) The addition of a claim for damages pertaining to business interruption caused by mold and asbestos preventing her from working as a massage therapist in the home (para 20);

(f) The addition of a claim for other expenses and wage loss caused by Ms. Ponto performing remediation work herself (para 21);

(g) The addition of an alternative claim against the Defendant based in negligence fir failing to address mold and asbestos contamination (para 22);

(h) Increasing the amount of damages claimed in the prayer for relief from $75,000 to $983,933.29. These proposed damages are particularized as follows:

  (i) Judgment under the Policy or damages in the amount of $417,415.90;

  (ii) General damages in the amount of $414,689.27, including damages for "the inconvenience and loss of enjoyment of the Dwelling;

  (iii) Wage loss and additional business costs in the amount of $51,725.08;

  (iv) Medical damages and additional costs in the amount of $11,068.88 or an amount to be further proven at trial; and

  (v) Costs of $9,034.16

[14] On May 17, 2024, Ms. Ponto filed a 168-page Affidavit, plus an additional 1,300 pages of exhibits. Ms. Ponto appears to have attached all of the paperwork, notes, invoices, receipts, medical records, a USB key, scientific articles, letters and emails between herself and her lawyers, and other documents she has, as exhibits in the hopes that something within would provide support for her application to amend. The Affidavit is organized roughly in chronological order but there is much duplication, and the organization of these materials is

haphazard, as is Ms. Ponto's evidence about what exactly the exhibits are purported to be. It is exceedingly difficult to parse out which evidence relates to which proposed amendment.

II. Legal Framework

[15] Amendments to pleadings are governed by *Rule* 3.62 and *Rule* 3.56 of the *Alberta Rules of Court*, A/R 1245/2010, which together require the Court's leave to amend pleadings after they have closed.

[16] Neither *Rule* sets out the legal test for determining when an amendment to a pleading ought to be allowed. Rather, that test has been developed through jurisprudence: ***AARC Society v Canadian Broadcasting Corporation***, 2019 ABCA 125 at paras 4-5. The accepted principle is that any pleading may be amended at any time, no matter how careless the party seeking to amend may have been about drafting its pleadings or seeking the amendment. Although the test for amending pleadings is easily met as there is a strong presumption in favour of allowing such amendments, this does not mean that leave to amend must always be granted. Over time, certain circumstances in which proposed amendments ought not to be allowed have been identified.

[17] Overall, the Court has a broad discretion to allow amendments to pleadings or not. At paras 40 – 41 in ***Astolfi v Stone Creek Resorts Inc***, 2023 ABKB 416, the Court states:

> Courts must consider two distinct interests when assessing the merits of an amendment application: (1) the impact the proposed amendment will have on the non-moving party's litigation interests; and (2) the public interest in the resolution of litigation as quickly as reasonably possible without the expenditure of more public and private resources than is reasonably necessary: ***AARC Society*** at paras 57–62.

[18] In ***Astolfi***, the circumstances in which amendments ought to be denied was described as follows:

> (a) the proposed amendment will significantly harm a legitimate litigation interest of the non-moving party; for example the proposed amendment will cause significant prejudice to a legitimate litigation interest of the non-moving party that cannot adequately be abridged by an ameliorative costs order or any other order: ***Pace*** at paras 4–5; ***Kosteckyj*** at para 41; ***AARC Society*** at para 64; ***Attila Dogan*** at para 25; ***Remington Development Corporation v Enmax Power Corporation***, 2022 ABCA 71 at para 33;
>
> (b) the proposed amendment advances a claim that cannot possibly succeed or is hopeless because it would have been struck if it were in the original pleading; the test is whether it is plain and obvious that there is no triable issue: ***Swaleh v Lloyd***, 2020 ABCA 18 at para 13; ***Remington*** at paras 35–37; ***Eon Energy Ltd v Ferrybank Resources Ltd***, 2018 ABCA 243 at para 18. This incorporates considerations like those under *Rule* 3.68. For example, proposed amendments will be hopeless if they:
>
> (i) disclose no cause of action or reasonable claim, or no reasonable defence to a claim: ***Pace*** at para 6; ***AARC***

Society at para 10; ***Attila Dogan*** at para 27; *Rule* 3.68(2)(b);

(ii) raise matters over which the court has no jurisdiction: *Rule* 3.68(2)(a);

(iii) are frivolous, irrelevant or improper: *Rule* 3.68(2)(c);

(iv) constitute an abuse of process: *Rule* 3.68(2)(d); and

(v) have an irregularity that is so prejudicial to the claim that it is sufficient to defeat the claim; *Rule* 3.68(2)(e);

(c) the proposed amendment is not supported by a required threshold level of evidence, based on the nature of the proposed amendment: ***Balm v 3512061 Canada Ltd***, 2003 ABCA 98 at paras 25–29; ***Attila Dogan*** at para 24; ***Barker v Budget Rent-A-Car of Edmonton Ltd***, 2012 ABCA 76 at para 12; ***Brewin v Magyar***, 2022 ABKB 729 at paras 32–33; ***Club Industrial Trailers v Paramount Structures***, 2022 ABQB 34 at para 25;

(d) unless permitted by statute, the proposed amendment seeks to add a new party or a new cause of action after the expiry of a limitation period and is statute-barred or subject to a "rock-solid" limitations defence: ***Attila Dogan*** at para 25; ***Pace*** at para 6; ***AARC Society*** at para 65;

(e) if the failure to plead earlier, or the proposed amendment itself, involves bad faith: ***Pace*** at paras 7, 54; ***AARC Society*** at paras 11, 66; ***Attila Dogan*** at para 25; and

(f) the proposed amendment will contravene the public interest in promoting expeditious and economical dispute resolution: ***Pace*** at paras 4, 7, 51–52; ***Kosteckyj*** at para 41; ***AARC Society*** at paras 59–62.

III. Analysis

[19] At the outset, I allow any amendments proposed to correct grammar given that Ms. Ponto is now the sole Plaintiff (rather than a co-Plaintiff with her husband). Wawanesa does not appear to object to these amendments. I also confirm that the proposed amendments in paras 23 and 26 (relating to any claim brought on behalf of HMQ) are no longer being pursued by Ms. Ponto.

[20] Wawanesa argues that the remainder of Ms. Ponto's proposed amendments fall into the exceptions to the general rule that amendments to pleadings ought to be allowed. Wawanesa raises two issues in support of its position; first, that the proposed amendments are hopeless and cannot possibly succeed at trial, and second, that the proposed amendments fundamentally change the nature of this action at a late stage of the litigation, are in breach of its legitimate litigation interests, and the general public interest, in an expeditious resolution of this action, and cause prejudice that cannot be compensated with costs.

(a) Are the Proposed Amendments Hopeless?

[21] What constitutes a "hopeless" amendment was addressed in ***Attila Dogan Construction and Installation Co Inc. v AMEC Americas Limited***, 2014 ABCA 74 at para 27:

> Several things might make a proposed amendment "hopeless". That category would include amendments that do not disclose a cause of action. There may be other circumstances where the proposed amendment is so inconsistent with the record that it could fairly be described as "hopeless". Here the case management judge used the expression to indicate that the appellant had not even brought forward enough evidence to meet the low evidentiary threshold required to support an amendment. The use of the term "hopeless" in that context is not an error of law.

[22] Wawanesa argues that Ms. Ponto has failed to provide evidence which would support the proposed amendments, and that her proposed amendments are inconsistent with the evidentiary record that does exist. This ought to lead to the conclusion that her proposed amendments are "hopeless": ***Attila Dogan Construction,*** para 27.

[23] The requirement to show sufficient evidence to support proposed amendments is a low threshold, but some evidence is required to amend after the close of pleadings: ***Attila Dogan***, paras 24 and 26. A modest degree of evidence is enough, as the applicant does not need to show the amended pleading can be proved at trial or would meet the test for summary judgment: ***Attila Dogan*** para 26, citing ***Balm v 3512061 Canada Ltd***, 2003 ABCA 98, and ***RK v GSG***, 2024 ABKB 661, para 8.

[24] The Court may still be required to weigh the evidence; and while the mere presence of contradictory evidence does not necessarily prevent an amendment, it does not follow that merely providing some evidence on each point is sufficient: ***Attila Dogan***, para 29.

[25] Ms. Ponto's Affidavit does include some evidence on the topics of mold and asbestos contamination, a business interruption claim, and her damages.

[26] Exhibits to Ms. Ponto's Affidavit include her personal notes summarizing events and conversations she had with various people immediately after her claim was reported to Wawanesa. Included in those notes are entries regarding the question of whether Ms. Ponto's home had asbestos.

[27] These conversations led to testing of ceiling tiles and insulation in approximately October 2013. The results of the testing showed the presence of asbestos in the insulation, but at a concentration of less than 1%. The testing showed no asbestos in the ceiling tiles. Ms. Ponto testified on cross examination of her Affidavit that testing was also performed on some drywall seams which did not reveal the presence of asbestos.

[28] With respect to the insulation sample, the test report included the following note:

> "Due to usually low and highly variable concentration of asbestos in vermiculite, non homogenous nature of vermiculite as well as variable methods of mining and manufacturing, the quantitative results...may not be conclusive and should only be interpreted as showing the presence or absence of asbestos in the sample submitted. Analysis by Transmission Electron Microscopy (TEM) is recommended for quantitative determination of asbestos in vermiculite."

[29] There is no evidence showing that further analysis by TEM was conducted either by Wawanesa or Ms. Ponto.

[30] Later in October 2013, Ms. Ponto saw her doctor with a complaint of exposure to asbestos and mold. Her Affidavit attaches as an exhibit the results of some chest x-rays reporting no issues in her chest.

[31] Ms. Ponto sent an email to her adjuster on October 25, 2013, noting that the damage to her home has caused an interruption to her "home based business" and that she may consider advancing a business interruption claim.

[32] In December 2013, the issue of mold testing was raised in an email from Wawanesa's adjuster to Ms. Ponto. Some air quality testing was arranged and in April 2014, a report was produced showing no problematic fungal growth.

[33] Even though no further testing for asbestos was done to confirm the initial test results, in January 2014, Wawanesa arranged for asbestos abatement services to be performed at Ms. Ponto's home. After that work was completed, the contractor advised that no further abatement was required. Ms. Ponto confirmed on cross examination that the asbestos abatement work was done and that it dealt with any asbestos that might have been present.

[34] Ms. Ponto raised the issue of a business interruption claim again in May 2015. Wawanesa's adjuster responded that the Policy does not cover business interruption and suggested that Ms. Ponto speak with her broker to discuss what insurance coverage her business might have.

[35] Later that month, Ms. Ponto again raised the issue of mold growth on some joists and other areas. The restoration company advised that the marks were not mold but that they would treat the area with an anti microbial, nonetheless.

[36] In July 2015, Ms. Ponto obtained a letter from a cleaning company expressing the view that there was "evidence of possible mold upstairs and in the basement..." but declining to provide a remediation quote until comprehensive environmental testing was done.

[37] Ms. Ponto then attended her doctor's office and obtained a letter from her doctor which includes the statement, "A recent inspection of her house showed presence of moulds". Ms. Ponto was referred for lung testing, but the resulting report indicated that her lung function was normal.

[38] Wawanesa argues that the evidentiary record, as it now stands, does not support the amendments advancing a claim for damages arising from the presence of asbestos or mold within Ms. Ponto's home. There is no evidence establishing the presence of mold. With respect to asbestos, even if you accept the initial test results regarding asbestos in the insulation, the evidence demonstrates that it was remediated. Further, there is no evidence establishing that Ms. Ponto suffers from any ill effects caused by asbestos or mold.

[39] With respect to Ms. Ponto's claim of mold contamination, the initial test results, taken closer in time to the event in question, indicate that there was no mold detected. Although Ms. Ponto obtained a subsequent opinion from a cleaning company regarding the presence of mold, that opinion does not establish that there was mold in the residence caused by the flooding of water that occurred in 2013. Rather, the author of the report simply makes visual observations of black stains in certain places throughout the residence and opines that these stains are "evidence" of possible mold. This is a far cry from establishing the probability of mold within the home.

[40] There is insufficient evidence to establish the presence of mold within Ms. Ponto's home, or that Wawanesa somehow failed to remediate it or was negligent in doing so.

[41] With respect to the issue of asbestos, there is some evidence that there was asbestos within the insulation of Ms. Ponto's home. The report providing this analysis makes it clear that further testing is required to provide a "quantitative determination" – in other words, to determine how much might be present. There is further evidence which demonstrates that asbestos was remediated by contractors retained by Wawanesa, but that Ms. Ponto knew that the remediation dealt with the asbestos.

[42] There is insufficient evidence to establish that to the extent there was asbestos within Ms. Ponto's home, that Wawanesa somehow failed to remediate it or was negligent in doing so.

[43] There is no medical evidence establishing that Ms. Ponto suffered from any ill effects caused by asbestos or mold. The medical records she has produced mention asbestos or mold exposure, but only in the context of a description of the subjective complaints made by Ms. Ponto to her medical practitioners. There is no diagnosis of any health problems specifically caused by asbestos or mold.

[44] Having concluded that there is insufficient evidence to support the amendments asserting that there was mold and asbestos in Ms. Ponto's home and that the presence of mold and asbestos caused her health issues or other damages, or that Wawanesa was in breach of the Policy, or alternatively, negligent in how it dealt with these concerns, any proposed amendments advancing such claims are hopeless.

[45] With respect to Ms. Ponto's claim for damages arising from business interruption, her pleading in this regard is very unclear. In particular, it is not clear whether her allegation is that Wawanesa owes her indemnity for business interruption under the Policy, or whether she is entitled to damages for loss of business revenue due to the negligence of Wawanesa, and if the latter, whether that negligence arises from Wawanesa's position on the claims of asbestos and mold contamination, or whether it arises due to the way Wawanesa dealt with Ms. Ponto's claim overall.

[46] Ms. Ponto has attached as an exhibit to her Affidavit a brochure containing the wording for a homeowner's policy of insurance. In examining her Affidavit, she does not specifically attest to the fact that the brochure she has attached is in fact the wording of the Policy in issue here. For the purposes of this decision, however, I will assume that it is. Those terms and conditions do not include coverage for business interruption, and it is clear that the Policy is not a business interruption policy.

[47] The Policy does not provide Ms. Ponto with a right to claim indemnification from Wawanesa for business interruption.

[48] With respect to a claim in negligence, as noted above, Ms. Ponto has not provided sufficient evidence of how Wawanesa's remediation of mold and asbestos was negligent, or that any such negligence caused any business interruption. Further, her proposed overall pleading of negligence does not clearly set out the basis for that claim.

[49] Her claim for damages arising from business interruption is also therefore hopeless, as is her claim of negligence.

[50] The remainder of the proposed amendments primarily relate to the particularization of damages and costs. I have concluded that there is sufficient evidence within Ms. Ponto's Affidavit and exhibits to support these amendments, consisting of various invoices, letters and emails advancing such claims, and that they cannot be described as "hopeless". This is not to say that Ms. Ponto has proven these damages – only that she has met the low threshold for permitting these amendments.

(b) Do the Proposed Amendments Prejudice Wawanesa?

[51] The existing Statement of Claim frames Ms. Ponto's claim against Wawanesa as breach of contract and advances a claim for damages, including punitive damages, arising from the alleged failure of Wawanesa to indemnify Ms. Ponto in accordance with the terms of the Policy. Wawanesa argues that now, 11 years after the event which gives rise to the claim, the proposed amendments assert a new cause of action (negligence) and dramatically increase the nature and extent of the damages claimed (including damages which are not covered by the Policy). The proposed amendments effectively transform a stale claim, even though Ms. Ponto knew of all of the underlying facts at the time the original Statement of Claim was issued. The passage of time causes prejudice to Wawanesa because of the difficulties associated with defending a stale claim. Further, Wawanesa, and the public in general, has a legitimate interest in resolving litigation in a timely way. The proposed amendments are a waste of public resources because they will require significant additional litigation steps which ought to have been completed long ago.

(1) The Presumption of Prejudice

[52] Wawanesa points to jurisprudence which refers to a presumption of prejudice when amendments are sought that fundamentally change the issues in a lawsuit or are transformational in nature, especially amendments sought many years after the initial event which gives rise to the claim.

[53] The concept of a presumption of prejudice when amendments are sought at a late stage in the litigation is raised in ***Eon Energy Ltd v Ferrybank Resources Ltd***, 2018 ABCA 243. There, the defendant sought to amend its pleadings on the eve of trial, but its application was denied by the trial judge, partly on the basis that the proposed amendments would cause serious prejudice not compensable in costs. The proposed amendments "fundamentally" changed the issues at trial after four years of litigation, extending the focus to events which occurred more than 13 years earlier and completely contradicting the position the defendant had taken throughout the litigation. The trial judge found that the amendments meant the trial could not proceed as scheduled, and that the defendant could have sought the amendment much earlier in time. In reliance upon ***422252 Alberta Ltd. v Messenger***, 2013 ABQB 399, the trial judge stated:

> Even if the limitation period as submitted by Ferrybank has not passed with respect to its request for a declaration that Eon has no interest in the wells, and on the basis that there is a continuing action constantly re-setting the limitation as Ferrybank has submitted, the matters relevant to the determination of title occurred more than ten years ago. <u>There is, therefore, a presumption of prejudice given the long passage of time</u> and I find that Ferrybank has not rebutted this presumption. (emphasis added)

[54] In upholding the trial decision, the Court of Appeal provides no clear comment on whether the trial judge's statement regarding the existence of a presumption of prejudice was

correct or not. Rather, other decisions were reviewed as supportive of the trial judge's decision. For example, in ***Hartum (Estate of) v Loewen***, 2007 ABCA 15, amendments were refused when a three-week trial had already been set, experts reports were nearly ready, seven rounds of questioning had taken place and the tremendous amount of work that had taken place all caused real prejudice to the respondent. In ***Matthison v Bradburn (Estate)***, 2007 ABCA 173, amendments were refused on the morning of trial in a case which had been commenced ten years earlier and the need for amendments had been apparent many years before.

[55] ***Eon*** is cited regularly in subsequent decisions from this Court dealing with amendments to pleadings, but there is little to no comment upon whether a presumption of prejudice applies if amendments are sought after a certain time frame. In ***Brewin v Magyar***, 2022 ABKB 729, the Court notes at para 28, that:

> It will be easier to establish serious prejudice not compensable in costs where the amendments relate to events that occurred long ago, there have been many years of litigation on original pleadings, new amendments fundamentally change the issues, and the amendments will cause further delay such as adjournment of a trial or the need to redo questioning and production of records: ***Eon Energy***, paras 19-28; ***Jin v Ren***, 2014 ABQB 250, paras 31-32; and ***Precision Forest Industries Ltd v East Prairie Investments Corp***, 2018 ABQB 489 (M.), paras 48-49.

[56] In ***Jin***, the Court found that amendments were sought at a very late stage in the proceedings, attempted to introduce new representations and allegations, withdrew admissions, and raised defences without having met the prerequisites. In ***Precision Forest Industries***, the Court cites ***Messenger*** and concludes that the respondent had met its burden of showing it would suffer non compensable prejudice were the amendments to be allowed when it had been over 14 years since the agreement which formed the basis of the litigation had been signed. The Court notes at para 48 that, "this is a significant period of time and its passage is detrimental to the availability and that quality of evidence".

[57] In ***Woodbridge Homes Inc v Andrews***, 2019 ABQB 585, the Court commented at para 21 that,

> Amendments proposed even at a very late stage of a civil proceeding are permitted under the general rule, provided that the amendments do not prejudice the opposite party or fall into one of the other exceptions. For example, if all the evidence has already been completed without reference to an issue not raised by the pleadings, prejudice will be virtually inevitable: ***McDonald v Fellows*** (1979), 1979 ABCA 224 (CanLII), 17 AR 330 at 336 (Alta CA)

[58] Most recently, in ***RK v GSG***, 2024 ABKB 661 at para 7 the Court notes that if an opposing party objects to the proposed amendments, that party bears the onus of proving, on a balance of probabilities, that the amendment falls within one of the exceptions, citing ***Foda v Capital Health Legion***, 2007 ABCA 207 and ***AARC Society*** at para 53.

[59] The statement of the trial judge in ***Eon*** about a presumption of prejudice is an outlier. There is no such presumption. To conclude otherwise would reverse the burden of proof. Other decisions (including those relying upon ***Eon***) confirm that a respondent still bears the burden of proving prejudice, even after a significant passage of time. However, that burden becomes

progressively easier to meet the longer the action has been outstanding, and the more steps have been taken to prepare for trial – to the point where it might become "inevitable".

[60] In this case, a significant period of time has passed between the issuance of the Statement of Claim (9 years); even more since the events which form the basis of this claim (11 years). The difference between this action and the others in which amendments were disallowed is the proximity to trial and the steps taken in the litigation. This action is not close to trial, even after the passage of a significant amount of time. Questioning of the parties does not appear to be complete. Experts' reports have not been prepared. Trial has not been scheduled.

[61] I take notice of the Court's statement in ***Precision Forest Industries*** that the passage of time is detrimental to the availability and quality of witnesses and evidence. However, Wawanesa has not put forward any specific evidence of issues in this regard, instead preferring to rely upon the argument that prejudice is presumed.

[62] As noted above, there is no presumption of prejudice, and despite the passage of time, the action is not so far along, and Wawanesa will still have the opportunity to file an amended statement of defence and will have the opportunity to question Ms. Ponto on the entirety of her claim. Wawanesa will have the opportunity to retain experts. In short, Wawanesa has not established prejudice to a degree that it cannot be compensated in costs.

(2) The Interest in a Timely Resolution

[63] I agree with Wawanesa that both it, and the public at large, has an interest in ensuring that litigation is resolved in a timely way. The Court's resources are finite, and the failure to bring disputes to a timely resolution means that Court time is monopolized when it could be allocated to other matters.

[64] However, the record before me does not show that Wawanesa is entirely faultless. Despite filing its Statement of Defence in 2016, Wawanesa has not shown that it has attempted to complete the litigation steps it needs before proceeding to trial – namely, completing questioning of Ms. Ponto, retaining experts, etc. In these circumstances, I am of the view that Wawanesa's (and the public's) interest in timely resolution can be addressed by requiring the parties to prepare a Litigation Plan, to be filed with the Court, which sets out deadlines by which the remaining steps in this litigation will be completed.

IV. Conclusions

[65] To summarize, grammatical amendments reflecting the removal of Derek Ponto as Plaintiff are allowed.

[66] The evidence is not sufficient to support the proposed amendments advancing claims of a breach of policy for failing to address mold or asbestos contamination, or negligence (for failing to address mold or asbestos contamination, or generally), or for damages arising from asbestos or mold contamination or business interruption. Therefore, the proposed amendments in the following paragraphs are disallowed as being hopeless: the portion of para 12(a) that states "$83,490.38 times five (5) inclusively equal the amount of $417,425.90" although Ms. Ponto may amend the amount claimed in 12(a) in order to correlate with the amendments relating to damages allowed herein, 12(d), 12(e), 12(k), 17, 18, 19, 20, the following portions of paragraph 21: "and exposure to mould and asbestos" and "as well as the time needed to address her medical issues described above", 22, the portion of 25(d) stating "and additional business costs", 25(e).

[67] Any proposed amendments not included in this list are allowed.

[68] Ms. Ponto must prepare an Amended Statement of Claim in accordance with my directions herein and file it within 7 days from the date of this decision. She must then serve it upon counsel for Wawanesa in accordance with *Rule* 3.62(2)(b)(i). Wawanesa may then file an Amended Statement of Defence in accordance with *Rule* 3.62(3)(a).

[69] The parties must prepare and file with the Court a Litigation Plan setting out all remaining steps required in this matter, together with deadlines for the completion of those steps, no later than January 31, 2025.

Heard on the 13th day of September, 2024.
Dated at the City of Wetaskiwin, Alberta this 15th day of November, 2024.

L.K. Harris
J.C.K.B.A.

Appearances:

Laurie Ponto
Self-Represented Litigant

Justin Laverty-Harrigan
Duncan Craig LLP
for the Defendant/Respondent